BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 4587 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

CLIONE M. MAXON
(Claimant)
S.S.A. No.

SOUTHERN CALIFORNIA TELEPHONE CO.
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-198

FORMERLY
BENEFIT DECISION
No. 4587

The above-named employer has appealed from the decision of a Referee (R-12786-42759-46) which held in part that the claimant was available for work as required by Section 57(c) of the Unemployment Insurance Act (now section 1253(c) of the Unemployment Insurance Code). The claimant herein has also appealed from a part of this decision which disqualified her from benefits under Section 58(a)(4) of the Unemployment Insurance Act (now section 1257(b) of the Unemployment Insurance Code) on the ground that she refused an offer of suitable employment without good cause.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed by the appellant-employer for a period of more than fifteen years. She began as a telephone operator in Spokane, Washington, and later transferred to Los Angeles. She last worked on October 15, 1945, when, following a three-week vacation, she applied for an extended leave of absence in order to be with her husband who had returned from overseas military service. On the expiration of this leave, she submitted her resignation effective as April 1, 1946.

At the time of her termination she was employed in the plant department as an assignment clerk, working on the day shift, eight hours per day, six days per week, at a wage of $39.00 per week, plus overtime for hours in excess of forty per week. Prior to 1930, the claimant had worked for short periods as a typist, cashier, and comptometer operator.

On April 12, 1946, the claimant registered for work as a typist and filed a claim for benefits in the Glendale office of the Department of Employment. Upon receiving notice that a claim had been filed, the employer herein protested, stating that the claimant had failed to apply for reemployment when offered. The Department thereupon issued a determination which disqualified the claimant from benefits for a five-week period from April 11, 1946, through May 23, 1946, on the ground that on April 19, 1946, she had refused an offer of suitable employment without good cause within the meaning of Section 58(a)(4) of the Unemployment Insurance Act. No appeal was filed from this determination. Prior to the expiration of this disqualification, the employer again offered to rehire the claimant, and the Department on May 31, 1946, issued a second determination which held that the claimant had good cause for failing to apply for suitable employment offered on May 17, 1946. From such determination the employer appealed. A Referee held that the claimant had successfully refused offers of suitable employment without good cause within the meaning of Section 58(a)(4), and was therefore subject to the extended disqualification of eight weeks as provided in Section 58(b) of the Act.

By letter dated May 14, 1946, the employer offered to rehire the claimant as a clerk in the plant department. The hours were to be from 8:30 a.m. to 5:00 p.m. at a base wage of thirty-nine dollars for forty hours. The employer representative testified that this was the same position as the one offered the claimant on April 9, 1946, and was similar to the position she had previously held with the company. In refusing this second offer, the claimant wrote on May 25, 1946:

> "I am unable to accept your offer of employment for the following reasons - the same reason I have given to the Employment Department of California. My husband does not want me to return."

The claimant testified that her husband did not wish her to return to this particular employer because of the improvement in her health since she quit work. She was employed on a service order desk which she was supposed to handle alone, but the orders often accumulated so rapidly that some of her work had to be done by other employees, a circumstance which distressed the claimant and made her nervous. She concedes that her termination was not for health reasons, nor has she at any time been under a physician's care.

According to the testimony of the employer representative, the claimant terminated her employment solely because of her wish to be with her husband, with no indication that her work was adversely affecting her health, and without prospects of other employment. The employer representative further testified that at the time reemployment was offered, many departments of the company operated only five days per week and that an individual with the claimant's seniority, had she brought the matter to the company's attention, could have been considered for transfer to other work.

REASON FOR DECISION

The offers of reemployment made to the claimant by the employer herein on April 19 and May 17, 1946, clearly were offers of suitable work which the claimant refused for personal reasons not constituting good cause. She, therefore, would be disqualified from benefits for the maximum period provided in Section 58(b) of the Unemployment Insurance Act, unless, as contended by the employer, under the facts of this case, the claimant cannot be considered available for work as required by Section 57(c) of the Act (now section 1253(c) of the Unemployment Insurance Code).

The employer contends that the claimant was not available for work because she held herself unavailable for employment in her usual occupation. We are in agreement with that contention, and inasmuch as our conclusion differs from that reached by the Referee, we believe that our views as to the meaning of the availability for work requirement found in Section 57(c) of the Act should be indicated in some detail.

A definition of availability for work which is supported by the authorities we have reviewed is that in

order to meet the requirement, a claimant must be available for suitable work which there is no good cause to refuse, and for which there is a potential labor market in the geographical area in which the claimant's services are offered. See the following cases: Loew's Inc. vs. Calif. Empl. Stab. Comm. 172 Pac. (2d) 938; June Garcia vs. Calif. Empl. Comm. 161 Pac. (2d) 972; Bertheaume vs. Christgau (Minn.) 15 N.W. (2d) 115; Reger vs. Administrator (Conn.) 46 Atl. (2d) 844; W.T. Grant Company vs. U.C.C. (South Carolina) 28 S.E. (2d) 533; Brown-Brockmeyer Co. vs. Board of Review (Ohio) 45 N.E. (2d) 152; Haynes vs. U.C.C. (Missouri) 183 S.W. (2d) 77.

Disregarding, for the purposes of determining the instant case, the necessity that there be a potential labor market, as that factor admittedly was existent, if availability requires availability for suitable work which the claimant has no good cause to refuse, the converse must necessarily follow: a claimant who is not available for suitable work which he had no good cause to refuse is not available for work within the meaning of Section 57(c) of the Act.

The proposition just stated is in entire accord with the intendment of the law. Clearly, those individuals for whom there are opportunities to become employed in suitable work, who nevertheless refuse, for personal or other reasons not constituting good cause, to consider such suitable opportunities as the labor market can afford, cannot be regarded as involuntarily unemployed nor the proper recipients of unemployment benefits.

No authorities can be found which hold that less than a readiness, willingness, and ability to accept suitable employment which there is no good cause to refuse will suffice to meet the availability requirement. On the other hand, there are a number of cases which hold that a claimant who refuses to accept suitable employment which he has no good cause to refuse is not available for work. Most of these cases are predicated upon the patent contradiction which would result from the payment of benefits to individuals unwilling to accept suitable employment and the purpose of enactment (compensating persons involuntarily unemployed through no fault of their own). The California case of Leow's Inc. vs. California Employment Stabilization Commission, 172 Pac. (2d) 938, so holds.

Among the more widely cited cases arising in other jurisdictions wherein the Courts have reached a similar conclusion are:

W. T. Grant Company v. Board of Review (New Jersey Supreme Court), 29 Atl. (2d) 859

Judson Mills v. Unemployment Compensation Commission (South Carolina Supreme Court), 28 S.E. (2d) 533

Keen v. Texas Unemployment Compensation Commission, 148 S.W. (2d) 211

Brown-Brockmeyer Co. v. Board of Review (Ohio Supreme Court)

S.S. Kresge Co. v. Unemployment Compensation Commission, (Missouri Supreme Court), 162 S.W. (2d) 838

Haynes v. Unemployment Compensation Commission (Missouri Supreme Court), 183 S.W. (2d) 77

In the W. T. Grant Co. case, the New Jersey Supreme Court had before it a set of facts almost identical to those before this Board in the instant matter. The observations of the Court therein are therefore set forth in some detail:

> "The substantial question that comes to us for decision is whether a young woman who voluntarily quits work without reason referable to the employment and by personal preference withdraws for six months from the field of employment may thereafter hold herself available for employment only in a restricted field, refuse a position with her former employer comparable in character and wage with her last position and during the period of ensuing idleness receive employment benefits chargeable against the fund maintained by that employer.
>
> "The public policy upon which the unemployment statute is built, and which we are to use 'as a guide to the interpretation and application' of the statute, as declared

in the statute itself, R. S. 43:21-2, is to achieve social security by affording 'protection against this greatest hazard of our economic life', involuntary unemployment, 'which now so often falls with crushing force upon the unemployed worker and his family' and constitutes 'a serious menace to the health, morals and welfare of the people' of the state; a security which 'can be provided by encouraging employers to provide more stable employment and to create a systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, 'thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.'

"The refusal of the applicant to resume her employment with the prosecutor upon the ground that she wanted a better-paying job was the equivalent of surrendering an existing job and purposely remaining idle until a more lucrative one with some other and then undetermined employer might be found. The Grant Company was providing stable employment and was contributing toward a systematic accumulation of funds against the day when, because of economic instability, the hazard of involuntary unemployment might become a reality. Was the condition which claimant created and seduously maintained for herslef the involuntary unemployment which falls with such crushing force as to be a menace to our public welfare? Or did it depend to any degree upon the failure of industry to provide stable employment? We think not. The fresh acceptance of work with the Grant Company would not have prevented the claimant from surrendering that work to accept a more desirable position elsewhere when such should become available any more than the earlier employment prevented her from quitting when it suited her to do so. . . . To visit upon an employer who is seeking workers the expense of contributing toward the maintenance of an erstwhile worker over a period of months while she wilfully withholds herself from employment by that establishment to the single end that she

may find a job elsewhere with a bigger wage seems to us not to be within the scope of the enumerated purposes of the statute."

* * *

"Under the provisions of Paragraph 43:21-5(c) claimant was clearly disqualified for benefits during the week in which she was directed to apply to the Grant Company and for three weeks thereafter (refusal of suitable employment). The facts of this case lead us beyond that to the broader view that the applicant had not come into the eligible class. Applying all of the conditions enumerated in R. S. 43:21(c)(1), work at the Grant Company and like establishments was suitable for the claimant; so suitable that the commission directed her to go to that company and procure the work that was there to be had. Suitability of work is a mixed question of law and fact on which the final answer does not lie in the applicant for benefits. The applicant deliberately and continuedly shut herself off from a considerable field of suitable employment. By her purposeful and voluntary act she was not wholly available for suitable work, and thus she placed herself, in our opinion, outside of those who were eligible for unemployment benefits. Participation in benefits is granted only to those who in addition to being able to work or available for work. It was not merely that the applicant had failed to apply for designated job; she had made herself definitely unavailable for any position in that scale of employment. . . ."

Similarly, in the instant case, shortly before the claimant filed a claim for benefits, she voluntarily relinquished a full-time position in an occupation affording her employment over a fifteen year period and thereafter continuously while claiming benefits, refused to consider returning to that work under all of the criteria set forth in Section 13(a) of the Act (now section 1258 of the Unemployment Insurance Code), was suitable for her. That acceptance of such employment was objectionable to the claimant's husband certainly is not a real, substantial, or compelling reason which could be considered good cause for refusing available,

suitable work. It is apparently the contention of the claimant that she could continue to refuse suitable work in her usual occupation without good cause and yet be considered available for work and eligible to receive benefits for unemployment ensuing under such circumstances. Such a contention finds no support in the authorities, is contrary to fundamental concepts of unemployment insurance, and cannot be sustained. We, therefore, hold that since the claimant was not available for suitable employment which she had no good cause to refuse, she was not available for work within the meaning of Section 57(c) of the Unemployment Insurance Act during the period involved in this appeal.

In reaching the conclusion that the claimant herein was not available for work, we do not intend to hold that every claimant who may refuse an offer of suitable employment without good cause thereby must be considered to be unavailable for work. Such a construction of the Act would read out of the statute Section 58(a)(4) and Section 58(b), as no purpose would then be served by those provisions, which provide for a limited disqualification from benefits for refusing or failing to apply for suitable employment without good cause. Isolated instances of refusals of particular offers of employment for reasons attached to the particular prospective job; for reasons personal or otherwise existent at the particular time when the offer was received or for reasons which do not show an unwillingness to accept an entire segment of suitable employment are clearly distinguishable from the instant case where the claimant demonstrated, by her attitude and statements, that she was unwilling, without good cause, to accept suitable work in her usual occupation. The claimant herein did not merely refuse a designated offer of employment; she made herself unavailable for a substantial field of suitable work; in fact, as far as the record discloses, for the only suitable work in which the claimant had any reasonable prospects of becoming employed. She was not available for suitable employment; she had no good cause for refusing to make herself so available; she therefore cannot be considered available for work and eligible for benefits under the Act.

DECISION

The decision of the Referee is modified. The claimant is held not available for work for an

indefinite period beginning August 14, 1946. Benefits are denied.

Sacramento, California, October 24, 1947.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

HIRAM W. JOHNSON, 3rd

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 4587 is hereby designated as Precedent Decision No. P-B-198.

Sacramento, California, January 29, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BIRTSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT